

Petition and Answers for Sir William Murray of Newson,

T O

The PETITION of Thomas, and John Kincaid, Son to the now deceased Mr. Robert Kincaid of Gogerma.

Humbly Sweeth,

THAT upon the First of June 1720, Elizabeth Murray, my Sister, was most unhappily prevailed with by the said Thomas Kincaid to marry him, and all the Time she thereafter lived, was a Scene full of Woe, Sorrow, and of the greatest; and I may say, of the most unprecedent Affliction and Cruelty beyond what can be found upon Record in any Nation from a Husband or Fether-in-Law; for in three or four Days after the Marriage, he defected her, and went with his Father in Town and Country, as occasionally his Affairs did him to be; and she was forced to come and stay with him.

That in January 1724, he was taken up for a civil Debts, and incarcerated in the *Canongate Tolbooth*; and out of Duty and Compassion to his then Circumstances, I went to visit him there; but in place of a kind Reception, which should have been expected, he barbarously cutted closely off her left Ear, which she wanted all the remaining Time of her Life; and it was too evident, That the fatal Tragedy which he thereafter acted, had been then performed, if the same had not been prevented by the Keepers, and other Servants of the Tolbooth then providentially present; but what he then did was a too true Intimation of what was to follow.

That upon the Commission of the said horrid Act, his Friends took him out of the Tolbooth, and sent him away to Colonel Hacket's Regiment in the Dutch Service, thinking that Time and Conversation Abroad among Strangers, would alter his depraved Nature and Thoughts, and make him turn from his wicked Way of living, and repent for what he had done; and indeed if he could have been credat, he was in a fair Road for that End; for he was not above two Months in the said Regiment, when he wrote a Letter to me, containing full Expressions of Repentance, for what had past, and giving the greatest Assurances of his being a faithful, loving, and provident Husband in Time coming, if I would write to Colonel Murray my Uncle, to give a Man for him, so as he might be discharged and return Home, which I own I refused to do.

That nevertheless my poor unhappy Sister, who got the said Letter to read, did write to the Colonel her Uncle, acquainting him that she was married to the said Thomas Kincaid, and therefore intreated he might procure his Discharge that he might return again, wherewith the Colonel very soon complied; and in Consequence thereof, he came here in July 1724.

That notwithstanding all she had hitherto suffered by him and done for him, yet he never so much as came once to see her, tho' she was still with me, but went upon the Ramble to Newcastle and elsewhere for some Time, till a near Relation of his own, who was an Officer in the Foot-soldiers, took him to *Liverpool* where the Regiment was lying, to serve as a Cadet there; and I do apprehend this was very prudently done by his Friend, for preventing not only the sad Consequences which generally attend a total Idleness, but also the Suspicion and Execution of the dreadful Fact which followed.

That about the 18th of March 1723 he came from *Liverpool*, and made his first Visit to his Wife since he came from *Holland*, and then indeed he appeared very affectionate towards her, and took her from my House and carried her to his Father's, where they staid a whole Week together; and then he induced her to go out with him towards *Ginger-Mains*, upon the Pretence of living happily and contentedly there with him in his own Mansion-house, and upon his Estate, in which he stood infest by a Disposition from his Father: And the poor Creature minded nothing more than a Reconciliation with him, and had forgot all the former atrocious Injuries done her. But alas! upon the 29th of the said Month of March, when he and she were upon the Road, and about 10 o'clock at Night, within two Ridges length of the House of *Ginger-Main*, he was most barbarously murdered and cut to Pieces by him in the most horrid and cruel Manner that ever was heard of; for when her Body was found and inspected next Morning by two Chirurgeons mutually sent by the Friends concerned on both Sides, there were no fewer than 43 Wounds found upon and through the Body, and these besides most cruel Dismembractions; for her Tongue, Nose, Eyes, Over-lip, and three Fingers, were cut off and taken out, and soundly, lying at some little Distance from the Body, and were thereafter gathered and put within the same; and his Sword was likewise found beside the Body, broke in four

Pieces

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Pieces, whereof the Point piece was found so closely grip'd in her Hand, that it could scarcely be got out, and the Shell and all other Pieces thereto, were full of Blood. That Murder in any Case is such a Crime, that upon the naked Pronounciation of the Word, the very Nature of Man shrinks and starts back in Surprise and Dif-
order; and therefore I shall no further insist upon this sad and melancholy Subject, but may add, *Quis talia fando (vel audiendo) temperet a lacrymis?* And the said aban-
don'd Husband found Ways and Means to get abroad, and thereby escap'd the Punish-
ment due for such a Crime, where he yet continues.

That there having been no Contract of Marriage betwixt them, the said Mr. Robert Kincaid granted a Bond for alimenting her in Bed, Board and Cloathing in his Family, (she being neglected and deserted by her Husband, as hath been said) and also he bound himself and his Heirs therein to pay 200 Merks yearly to her during all the Days of her Life, after his Decease.

That notwithstanding of this plain and just Obligation, he maltreated and abused her, by beating and forcing her out of his House under Cloud of Night, bare-
footed, and starved her, by the Want of the very Necessaries of Life the little Time she staid with him: So that she was forced to come out and stay with me always; and I furnished to the Value of Twenty three Pounds Scots for Body cloaths to her.

That in February 1724, I pursued the said Mr. Robert before the Justices of the Peace, upon a very modest Libel, claiming only 200 Merks for One Year's Aliment preceeding her Death; and I obtained a Decree therefore, after I had proven by two concurring Witnesses that I had alimented her the said Time, and had given my own Oath in Supplement: And these Depositions are ingrossed in the Decree. I did also procure another Decree for the said 23 L. Scots, as the Price of Cloaths I had furnished to her; wherein he compeared.

That albeit no Mortal could have doubted the said two small Debts would have been most speedily and willingly paid, that they might never have been brought in publick again; yet Mr. Robert suspended: And at discusing before the Lord New-
ball Ordinary, he alledged the Decree for the 200 Merks was in Absence, and he offered to prove, that he had alimented my Sister the Time libelled: Which his Lordship, before Answer, allowed him to prove; and also allowed me to prove the saids Maltreatments, and others specially condescended upon in the extracted Acts.

That there was a mutual Probation adduced upon the saids Points, and Avian-
dum made therewith, and the Proofs stood enrolled among the concluded Causes, in order to be advised: But Mr. Robert died in September last; whereupon I raised a Transferre, and called the said Thomas therin upon the Passive Tirtles: And also I called his Brother John Kincaid, and upon Compearance for them, the Pro-
cess was transferred in common Room in January last.

That your Lordships having advised the State of the said Process the 16th Inst. you found the Maltreatments and Furnishing of the saids Cloaths proven, and that my Sister staid with me the Time libelled: Therefore decreed in Payment of the said 200 Merks, and 23 L. Scots; and found Expences due, and remitted to the Lord Ordinary to modifie the same.

That there is a Reclaiming Petition presented for the said Thomas and John Kin-
caids: Wherein they appear, 1mo, to be out of Humour, because their Lawyer was not allowed to plead unless he paid the Dues for preparing. 2d, 'Tis conten-
ded, That no Transferre could be raised against the Heir, or insisted in within the annus deliberandi. And 3rd, 'Tis very faintly insinuate, That the Defunct Mr. Robert had adduced a Proof, That he had alimented my Sister the Time libelled.

That to all these, I may offer the following exclusive Answers, viz. 1mo, That the Defenders called are Abroad, and no Mandate hitherto produced from either of them. And 2d, That a Defender called ought to pay the whole Dues for preparing, if he does not pay the Half thereof before the Cause comes to be advised. And I do insist upon this still, That the Doers for the Defendants should pay in which was modified for preparing; or otherwise, that the Peti-
tion be rejected and refused. And the Alledgeance appears no ways founded, that the Payments of such Dues falls only upon the Person who was original Defender; for when his Son is brought in, who represents him, then he takes up the Defunct's Place, with all the *commenda & incommoda* that may attend the Cause.

That to the 2d, it is answered, If the Heir be served and retoured, there is no Room or Place for Deliberation, and he can be pursued at any Time after the Defunct's Death; And I am in as good a Case, for the said Bond of Aliment and

and Provision, granted by Mr. Robert Kiacaid to my Sister, and is in Process, rates, That in November 1711, he disposed his Estate of Gogermais in favours of the said Thomas his eldest Son, containing Procuratory of Resignation, and Precept of Safine, under certain Reservations; One whereof is there mentioned to be, A Power and Faculty referred to him, to burden and affect the said Lands with his Debts, contracted or to be contracted: Therefore, and in Consequence thereof, he binds and obliges him and his Heirs, &c. Upon which Disposition, a Safine followed in Thomas his Favours the 20th December thereafter; and the same stands registered here upon the 15th February 1712, as hath been already seen by my Doers, and may be seen by any others; and if Need beis, the Keeper of that Record shall let it be seen before your Lordships.

That this being undeniable and true Fact, my Transference against the said Thomas Kiacaid is well and justly raised upon the Passive Titles, whereof one, as is usual, is libelled, That he accepted of a Disposition with Burden of Dabes; and the same neither hath been, nor can be refuled by his Procurator, tho' he were supported by a Mandate, as he is not. Therefore I humbly conceive, the great Nois that's made in the Petition *circa annum deliverandi*, must evanish, when the now Defender is so stated: And I do not know any Point of Form that hath been neglected; for all the said Papers I found upon, are and have been all along in the Proceeds.

That to the 3d, it is answered, By the Proof in my Decret before the Justices of the Peace, I have most concurringly proven the Alimenting of my Sister the Tunes libelled by two unquicstionable Witnesses, who were Door-neighbours, and who daily had Occasion to see her and me; one whereof was my Landlord, in whose House I staid, and I had a Room for my self, and another for my Sister: And besides I deponed in Supplement. And the Maltreatments specially condescended upon in the Act, are most concurringly proven in every Circumstance, by several Witnesses adduced by me, and by some adduced by the said Mr. Kiacaid. Yet all the noticeable Proof he adduced for his pretended Alimenting, lies upon the Depositions of Elizabeth Mair and Heles Thomson; and they are no ways probative or concurring upon either Time or Place, but manifestly contradictory: For the One says, That she knew her in Family with Mr. Kiacaid for about Half-a-year, or thereby, before her Death at Gogermais; and her Causa Scientia is, That she was near Door-neighbour to the Defender; and she is, as she is designed, Spouse to John Cambogam in Gogermais. And the Other says, That he knew my Sister to be in Family the same very Time and Months with Mr. Kiacaid in the Patternew; and her Causa Scientia is, That she lived next Door-neighbour to Mr. Kiacaid at that Time in the Patternew. So that there must have been a very strange Mistake in these Depositions. And all the rest of his Proof amounts to nothing, being ignorant of Time and Place, and know not any Thing to the Purpose, with respect to the Question in Controversy.

That thus I have laid the Case, in all its Circumstances, fully and fairly before your Lordships: And I do own there is nothing libelled against John Kiacaid, and so I have little to say to him; but the unhappy and miserable Thomas is brought in by the due Course and Forms of Law, as a Defender, representing his Father, who must be subject to your Lordships Decision, as his Father would have been if he had been alive: And neither I, or any else, I believe, could have expected that any Defence or Opposition would have been made by or for him in this Case. Nevertheless, I hope your Lordships will find, as you have done already, That I am well founded against him.

And seeing the said unhappy now Defender, has got upwards of 2000 Merks of yearly free Rent from his Father; and that I have been put to a great deal of Charges and Expences (besides the Want of my Money) in prosecuting the said Cause these three Years past, whereby I have expended the Double of my Sum; and that your Lordships were justly pleased to find Expences due, and remitted to the Lord Ordinary to modify the same, which cannot now be got done in the Cloe of the Session, and a Delay would be very inconsistent with my Circumstances and Interest, as is too well known to some of your Lordships Number.

Me At it therefore please your Lordships to consider what is represented, and to refuse the Desire of the said Petition, and adhere to your former Interdict for upon advising the Probation. And 2d d^r, To decern in presentis for the sum of Expences, conforms to an Account is Preces, since I cannot expect to have an Opportunity now this Session of applying, or getting the Lord Ordinary's Interlocutor therew^r.

According to Justice, &c.

PAT. LEITH.

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On other occasions, however, the
same author has written in a more
modest vein, as in the following
passage:



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